

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 90-776-T - ORDER NO. 91-533 ✓
JUNE 25, 1991

IN RE: Application of Aultman Trucking Co.,)
Inc., 542 Aultman Street, Orangeburg,)
SC 29115, to Transfer Class E Certifi-) ORDER
cate No. 6081 to Team II Transport,)
Inc., Secondary S-18-562, off Highway)
453, P. O. Box 98, Harleyville, SC 29448.)

This matter comes before the Public Service Commission of South Carolina (the Commission) by way of an Application filed by Aultman Trucking Co., Inc. (the Transferor), whereby the Transferor seeks certain relief in the nature of the approval of the transfer of its Certificate of Public Convenience and Necessity to Team II Transport, Inc. (the Transferee).

Subsequent to the initiation of this proceeding, the Commission Staff instructed the Transferor to cause to be published a prepared Notice of Filing in certain newspapers of general circulation in the State of South Carolina. The Notice of Filing indicated the nature of the Application and advised all interested parties desiring to participate in the proceeding of the manner and time in which to file the appropriate pleadings. A Petition to Intervene was filed on behalf of Santee Carriers, Inc.

A public hearing was held on June 12, 1991 at 10:30 a.m., in the Hearing Room of the Commission at 111 Doctors Circle,

Columbia, South Carolina, with the Honorable Marjorie Amos-Frazier presiding. William E. Booth, III, Esquire, represented the Transferor; Robert T. Bockman, Esquire, represented Santee Carriers, Inc.; and F. David Butler, Esquire, represented the Commission Staff.

The transferor presented the testimonies of Olivia Rawls and John T. Gentry in support of its Application. No other witnesses were presented.

In order for the Commission to approve the transfer, the Commission must find and conclude that the requirements of Commission Regulation 103-136 have been satisfied. R. 103-136 provides in pertinent part that:

The Commission shall approve an application for... sale or transfer of a certificate made under this section upon finding (1) that sale... will not adversely affect the service to the public under said certificate, (2) that the person acquiring said certificate... is fit, willing and able to perform such service to the public under said certificate, and (3) that all services under said certificate have been continuously offered and reasonably provided to the public for a period of time not less than twelve (12) months prior to the date of the filing of the application for approval of the sale... of said certificate, or, in lieu thereof, that any suspension of service exceeding thirty (30) days shall have been approved by the Commission... No sale... of a certificate will be approved where such action would be destructive of competition or would create an unlawful monopoly.

The intervenor announced at the beginning of the hearing that it actually had no opposition to the transfer of the the Class E Certificate to Team II Transport, Inc.

Upon consideration of the evidence in the record the

Commission makes the following findings and conclusions:

1. Based on the testimony of witnesses Rawls and Gentry, the Commission finds that:

a. John T. Gentry and his brother have extensive experience in the trucking industry.

b. John T. Gentry is a Certified Public Accountant.

c. Capitalization for the operation will be in the amount of approximately \$75,000.

2. Based upon the above findings, the Commission concludes that Team II Transport, Inc. is fit, willing, and able to perform the necessary services and that the transfer of the Certificate will not adversely affect the service to the public.

3. Based on the testimony of witnesses Rawls and Gentry and a review of the Commission files, the Commission finds and concludes that service to the public has been continuously offered and reasonably provided by the transferor for a period of twelve (12) months prior to the filing of the application for transfer and that any suspension of service has been handled in compliance with the applicable Commission regulation.

4. R. 103-136 (4) states that the issue of public convenience and necessity must be addressed where the provisions of subsection (3) of the above rule are not met, i.e. where there has not been compliance for the requirement of twelve (12) months service prior to the application. The provision does not apply to this application. The transferor showed that service was provided continuously for a period of twelve (12) months prior to the date

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of the application. Therefore, the Commission concludes that the issue of public convenience and necessity does not need to be addressed in this case.

5. The intervenor, Santee Carriers, Inc. does not object to the proposed transfer, but raises certain questions with regard to the continuing enforcement of a covenant not to compete originally entered into by it with Aultman Trucking Co., Inc. Counsel for the transferor objected to certain questions during the hearing with regard to this agreement as irrelevant, and further objected to the introduction of the agreement into evidence, as well as any interpretation of the agreement by the witnesses. The Commission sustains counsel's objections and notes that, although witnesses for the transferor apparently ratified the covenant not to compete from the stand, the issue regarding the covenant not to compete is collateral to the transfer, and the Commission takes no position with regard to said covenant, nor does the Commission intend that the covenant necessarily be made a condition of the transfer between the parties.

6. That the transfer of the Class E Certificate from Aultman Trucking Co., Inc. to Team II Transport, Inc. should be approved, in that this Commission finds that there would be no destruction of competition, nor an unlawful monopoly as a result of the transfer.

IT IS THEREFORE ORDERED:

1. That the proposed transfer of Class E Certificate No. 6081 from Aultman Trucking Co., Inc. to Team II Transport, Inc. is hereby approved.

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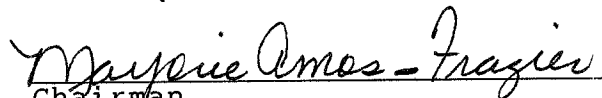
2. That the transferee shall file the appropriate license fees, and other required information required by S.C. Code Ann. §58-23-10 et seq., (1976), as amended, and by R. 103-100 through R. 103-280 of the Commission's Rules and Regulations for Motor Carriers, S.C. Code Ann., Vol. 26 (1976), as amended, within sixty (60) days of the date of this Order, or within such additional time as may be authorized by the Commission.

3. That upon compliance with S.C. Code Ann. §58-23-10, et seq., (1976), as amended, and the applicable provisions of R. 103-100 through R. 103-280 of the Commission's Rules and Regulations for Motor Carriers, S.C. Code Ann., Vol. 26, (1976), as amended, a certificate shall be issued to the Transferee authorizing the motor carrier services granted herein.


4. That prior to compliance with such requirements and receipt of a certificate, the motor carrier services authorized herein shall not be provided.

5. That this Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:


Chairman

ATTEST:


Executive Director

(SEAL)